

* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ Crl. Rev. P. No.360 of 2007 & Crl. M.A. No.5989 of 2007

%
24.01.2008

Date of decision:

SANJIT MALIK & ANR.

...PETITIONERS

Through: Mr. A.K. Singh with
Mr. Sanjeev Kumar, Advocates.

Versus

THE STATE (NCT of Delhi) & ORS.

...RESPONDENTS

Through: Mr. Jaideep Malik, Advocate
for the State.

Mr. Viraj R. Datar with
Mr. Aditya Jhanji, Advocates
for Respondent No.2.

CORAM:

HON'BLE MR. JUSTICE SANJAY KISHAN KAUL

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| 1. Whether the Reporters of local papers
may be allowed to see the judgment? | Yes |
| 2. To be referred to Reporter or not? | Yes |
| 3. Whether the judgment should be
reported in the Digest? | Yes |

SANJAY KISHAN KAUL, J. (Oral)

1. The erstwhile Delhi Vidyut Board (BSES Rajdhani Power Limited/respondent No.2 being the successor in interest) entered into an agreement on 17.5.2002 with Mr. Sanjay as the sole proprietor of M/s. Ishika Electricals under the scheme of single point supply of electricity, appointing M/s. Ishika Electricals as the agent. The object of such an agreement was to provide a single point supply to the agent for distribution of electricity to

unauthorised colonies/JJ bastis and for the agent to be responsible for the monthly revenue realisation. The agent was to receive the electricity in bulk from one or more point(s) from the supplier and to distribute the electricity to the residents of the area and collect revenue from them and thereafter prepare a monthly statement. The agent was also responsible for payment of minimum revenue for 75 per cent of the electricity energy as recorded in the meters provided by the supplier for measurement of bulk supply.

2. The said Mr. Sanjay is alleged to have entered into a Partnership Deed on 17.5.2002 itself with one Mr. Rajpal in respect of the said business with a share of 50 per cent each and the partnership is stated to have been subsequently registered.
3. On 3.4.2006, the enforcement team of respondent No.2 made an inspection of the single point delivery connection when the load of 475.253 KW for domestic use and 14.100 KW for non-domestic use totalling to 489.353 KW was found connected against the sanctioned load of 360 KW. Further, the three phase CTPT SPD electronic meter installed at the premises was found deliberately tampered with, the upper & lower covering strip of the CTPT terminal cover was found deliberately loosened and the lead seal wire was found cut so that any foreign material could be inserted to manipulate CTPT connections. The meter box plastic seal was removed to download CMRI data for further analysis to ensure that CTPT connection inside the CTPT box is delivery tampered to manipulate the recorded consumption of the SPD meter. Hence a case of dishonest abstraction of Energy was made out.

4. First proceedings were held on 25.4.2006 when the proceedings were attended to by Mr. Sanjit Malik (petitioner No.1 herein) as the partner of M/s. Ishika Electricals along with his advocate. Submissions were again made by the consumer wherein it was stated that the gap in upper and lower covering strip as alleged in the inspection report may be due to natural wear and tear and so far as the lead seals found tampered and re-fixed were concerned, the consumer was open to any investigation regarding the same. Time was given to file reply to the counsel. The concerned officer of respondent No.2 thereafter proceeded to hold sittings to assess the matter and the personal hearing of 5.6.2006 was attended by Mr. Davender Kumar, petitioner No.2 herein when he sought an adjournment as his advocate was not present on that date. The next date fixed was 9.6.2006 when the advocate appeared along with Mr. Rajpal. Submissions were made by the consumer and the CMRI data was discussed. The consumption record showed less consumption but the consumer did not accept the allegation of seal tampering. The video recording of the inspection was also shown to him where CTPT box cover was having a gap from which the connection to the meter could be manipulated. The proceedings were recorded on the said date.
5. It is thereafter on hearing the parties and examining the material that a speaking order was passed on 31.7.2006 where a case of dishonest abstraction of energy was found to be established.
6. A criminal complaint was filed on 19.12.2006 under Section 151 read with Section 154 of the Electricity Act, 2003 (hereinafter

referred to as the said Act) for offences under Sections 135 & 138 of the said Act and for determination of civil liabilities under Section 154 (5) of the said Act. The civil liability was assessed at Rs.20,08,090.00. In the complaint, M/s. Ishika Electricals were impleaded as accused No.1. Petitioner No.1 is accused No.2, petitioner No.2 is accused No.3 and Mr. Rajpal is accused No.4. It appears that in view of non-appearance of the accused and pursuance to the process before the criminal court, NBW were issued and proceedings were filed in this Court in Crl. M.C. No.1203/2007, in which orders were passed staying the operation of the NBW on the undertakings of the parties to appear before the trial court.

7. The bail application of the accused was considered and orders passed by the learned Additional Sessions Judge, Special Court (Electricity) on 21.4.2007. The argument raised before the said Court by the petitioner was that they have no concern with the complaint as they were not partners. Petitioner No.1 claimed to be the brother of the partner of M/s. Ishika Electricals, who had gone with petitioner No.2 itself, a friend of petitioner No.1, as the brother was out of station. On the other hand, the prosecution claimed that these two parties were recorded as partners and had signed the proceedings after perusing the same. Thus, merely because they appeared as attorneys or otherwise, there was no occasion for them to sign as partners. The trial court in terms of order dated 21.4.2007 admitted the three accused to bail on furnishing a personal bond in the sum of Rs.25,000.00 each with

one surety each of the like amount and directed the three accused to further deposit a sum of Rs.2.00 lakh each with the complainant within one month from the date of the order. It is this order, which is sought to be challenged in the present Revision Petition. Interim orders were granted on 23.5.2007 whereby the condition of deposit of Rs.2.00 lakh each was suspended.

8. Learned counsels for the parties have been heard at length. It is the submission of the learned counsel for the petitioners that the petitioners are nowhere concerned with the partnership firm and thus cannot be impleaded as accused. It is further submitted by learned counsel for the petitioners that in any case they cannot be imposed with the onerous condition of deposit of Rs.2.00 lakh each with which the petitioners are really aggrieved. Learned counsel submitted that, in fact, while considering the bail application there was no jurisdiction with the trial court to have imposed such a condition. In this behalf learned counsel has relied upon the judgement of the learned single Judge of this Court in Dinesh Ahluwalia & Ors. Vs. State 99 (2002) DLT 387. A reading of the judgement shows that in the given facts of the case it was found that there was no occasion for imposing condition directing the petitioners to deposit Rs.2.50 lakh in the fixed deposit. In fact, there was no principle or law set down in that behalf.

9. Learned counsel for respondent No.2, on the other hand, points out that a bare perusal of the proceeding sheets attended to by the petitioners would show that both the petitioners were signing as partners in the proceeding sheets and there was no occasion

for them to do so, if they had no concern with the partnership firm. Not only that it was pointed out that deliberately in the proceeding sheet of 5.6.2006 filed as true copy before this Court only the name of Mr. Davender Kumar is mentioned while the original proceeding sheet recorded his presence as Mr. Davender Kumar (Partner). It is thus alleged that a deliberate concealment has been done from this Court to convey an impression that the petitioners had nothing to do with the matter. Not only that, Davender Kumar had signed the proceeding sheet after putting a line across from the point where recording of proceeding ended till his signature to ensure that nothing was written in between. The petitioners knew the English language and were familiar with what was happening and, in fact, advanced submissions along with the counsel. Subsequent proceedings were attended to by the petitioners with the counsel.

10. Learned counsel also relied upon the judgement of the learned single Judge of this Court in Crl. Rev. P. No.744/2006 titled H.S. Pannu Vs. Govt. of NCT of Delhi & Anr. and other connected matters decided on 22.10.2007. The question examined was about the right of the Special Courts to have directed payment of amount as a condition for granting anticipatory bail in such cases of theft of electricity. The Court came to the conclusion that the power to impose condition in cases where the person is accused of committing offences under the said Act cannot be used invariably. Such power was held to be exercisable though sparingly. The judgement also considered the earlier pronouncement in Rajender

Vs. BSES Rajdhani Power Ltd. & Anr. 2007 CrI.LJ. 2799 where such a power to be exercised by a Special Court was held as exercisable.

11.It may also be noted that in some of the orders produced for perusal of the Court by learned counsel for respondent No.2 reliance was placed on the judgement of the Supreme Court in Chakrawarti Prasad Vs. State of Bihar 2002 (10) SCC 390 where the Apex Court while granting anticipatory bail itself had imposed a condition for deposit of certain amounts in case of theft of electricity. Such orders have been passed in CrI. M.C. No.7408/2006 dated 17.11.2006 and CrI. M.C. No.65/2006 dated 6.9.2006 where the imposition of condition of deposit of amount while granting bail in such cases of dishonest abstraction of energy have been upheld.

12.The last aspect emphasised by learned counsel for respondent No.2 is that the responsibility of the petitioners is even more onerous on account of the fact that they were not the consumer themselves but were agents of respondent No.2 with the obligation to collect revenues from the consumer on the supply being made on bulk basis through single point. Instead of assisting in the same, the petitioners started indulging themselves in dishonest abstraction of energy.

13.On being asked to explain as to why the true copy of the proceeding sheet dated 5.6.2006 did not reflect the correct position, the only explanation given by learned counsel for the petitioners is that the same appeared to be a typographical error.

14. On hearing learned counsels for the parties, the first important aspect which requires consideration is as to whether such a power does exist with the Special Courts to impose the condition of deposit of amount while granting bail. In my considered view, the answer to the same is in the affirmative. The pronouncement of the Apex Court in Chakrawarti Prasad Vs. State of Bihar case (supra) and Rajender Vs. BSES Rajdhani Power Ltd. & Anr. case (supra), in fact, leave no manner of doubt in this behalf. Even the judgement in H.S. Pannu Vs. Govt. of NCT of Delhi & Anr. case (supra) only adds a word of caution that such orders should not be passed in routine.

15. The order passed in the present case by the Special Court is a reasoned order. It has taken note of the fact that the present case is one where the agents of respondent No.2 entrusted with the responsibility of delivery through single point system and distribution to consumers as also for recovery of amounts from such consumers were indulging in dishonest abstraction of energy itself. It is not a case of a theft by a consumer but the matter is more aggravated by the petitioners being the agents. There are thus cogent reasons for imposition of the condition. This is more so since the total civil liability against the accused has been assessed at Rs.20,08,090.00 and only an amount of Rs.6.00 lakh has been directed to be deposited as a condition of the bail.

16. The main thrust of the argument of the learned counsel for the petitioners was the absence of the role of the petitioners in the partnership firm, which had entered into an agreement with

respondent No.2. It is the petitioners who appeared before the concerned authority. The petitioners did not appear as attorney or otherwise. The petitioners appeared as partners. Their presence was recorded as such and they signed the proceedings in that capacity even in the presence of their counsel. The submissions were made by the petitioners. It is only subsequently that having realised that there are aspects of criminal liability, which may also arise that the petitioners are seeking to take a U-turn. In any case the present stage is not one where there is conviction of the petitioners but the only concern at the moment is on the aspect of grant of bail. An aggravating circumstance in the present case is also the filing of incorrect true copy of a material document. This has been done to substantiate the plea of the petitioners that they were not partners, specifically petitioner No.2. Respondent No.2 produced the correct true copy to show that the said petitioner No.2 had, in fact, signed as partner. The endeavour of learned counsel for the petitioners to label the same as a mere typographical error is fallacious. The unfortunate part is that even after the aforesaid was pointed out, learned counsel for the petitioners has persisted with his submission.

17. For all the aforesaid reasons, I find no error in the order passed by the trial court nor any ground to exercise the revisionary jurisdiction.

18.The petition is dismissed with costs of Rs.15,000.00 especially taking into consideration the mis-representation made before this Court.

19.Interim order stands vacated.

JANUARY 24, 2008
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SANJAY KISHAN KAUL, J.